

**ALBANY UNIFIED SCHOOL DISTRICT  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

This agreement is hereby entered into this 13th Day of December, 2022, in the County of Alameda, State of California, by and between the Albany Unified School District, hereinafter referred to as "DISTRICT", and Forensic Analytical Consulting Services hereinafter referred to as 'CONTRACTOR.' DISTRICT and CONTRACTOR shall be collectively referred to as the Parties.

Contractor Address:

21228 Cabot Blvd. Hayward, CA 94545

STREET ADDRESS      CITY                      STATE      ZIP

**Contractor Services.** Contractor agrees to provide the following services to District (collectively, the "Services"): asbestos and lead-containing materials survey in selected offices, classrooms, mechanical rooms, and above ceiling spaces at Cornell Elementary School in relation to the future HVAC installation project as outlined in attached proposal.

1.     **Contractor Qualifications.** Contractor represents and warrants to District that Contractor and all of Contractor's employees, agents or volunteers (the "Contracted Parties") have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other legal qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. If any of the Services are performed by any of Contractor's Parties, such work shall only be performed by competent personnel under the supervision of and in the employment of Contractor.
  
2.     **Term.** CONTRACTOR shall commence providing services under this AGREEMENT on or about December 19, 2022. There shall be no extension of the Term of this Agreement without the express written consent from all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contracted Parties. In the event of early termination, Contractor shall be paid for satisfactory work performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.
  
3.     **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party; however, the parties may agree in writing to a shorter time period for the effectiveness of such termination. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially violates any of the terms of this Agreement, any act or omission by Contractor or the Contracted Parties exposes District to potential liability or may cause an increase in District's insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of said notice.
  
4.     **Compensation.** DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed Seven Thousand Five Hundred and Ninty Dollars (\$7,590). DISTRICT shall pay CONTRACTOR according to the

following terms and conditions:

- Such compensation shall be based on:
  - ☐ An hourly rate of\_\_for a total amount of\_\_hours
  - ☐ A daily rate of \$\_\_for a total amount of\_\_days
  - ☒ Total amount of \$7,590
- Payment method shall be:
  - ☒ Upon Completion
  - ☐ Date of Service
  - ☐ Other (Specify): Invoiced monthly based on % complete

Any work performed by Contractor in excess of said amount shall not be compensated.

Payment shall be made upon approval of DISTRICT and receipt of an invoice from CONTRACTOR one copy clearly marked original. CONTRACTOR's invoice shall be sent to: Albany Unified School District, Attention: Accounts Payable, 819 Bancroft Way, Berkeley, CA, 94710.

5. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor of the Contracted Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contracted Parties by District. Furthermore, any Equipment or workmanship that does not conform to the regulations of this Agreement may be rejected by District and in such case must be promptly remedied or replaced by Contractor at no additional cost to District and subject to District's reasonable satisfaction.
6. **California Residency.** Contractor and the Contracted Parties shall be residents of the State of California.
7. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Education, members of the Board of Education (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement, including but not limited to Contractor's or the Contracted Parties' use of the site; Contractor's or the Contracted Parties' performance of the Services; Contractor's or the Contracted Parties' breach of any of the representations or warranties contained in this Agreement; injury to or death of persons or damage to property or delay or damage to District or the District Parties; or for any act, error, omission, negligence,

or willful misconduct of Contractor, the Contracted Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

8. **Insurance.** Without in any way limiting Contractor's liability or indemnification obligations set forth in Paragraph 8 above, District reserves the right to require contractor to procure and maintain throughout the Term of this Agreement the following insurance:  
(i) comprehensive general liability insurance with limits not less than \$1,000,000.00 each occurrence and \$1,000,000.00 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000.00 each occurrence and \$1,000,000.00 in the aggregate; if applicable; and neither Contractor nor any of the Contracted Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insured. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If any of the required insurance is not reinstated, District may, at its sole option, terminate this Agreement. All of the policies shall also include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties.
9. **Independent Contractor Status.** Contractor, in the performance of this Agreement, shall be and act as an Independent Contractor. Contractor understands and agrees that s/he and the Contracted Parties shall not be considered officers, employees, agents, partners, or joint ventures of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.
10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from compensation payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contracted Parties and otherwise in connection with this Agreement.
11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contracted Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:  
  - ▣ Contractor and the Contracted Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

- ☐ The following Contracted Parties have **more than limited contact** (as determined by District) with District students during the Term of this Agreement:

\_\_\_\_\_  
[Attach and sign additional pages, as needed]

- ☐ All of the Contracted Parties noted above, at no cost to District, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these Contracted Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information, including additional personnel, which differs in any way from the representations set forth above, Contractor shall immediately notify District and prohibit any new personnel from having any contact with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any such contact is permissible.

12. **Tuberculosis Certification.** Contractor and the Contracted Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

- ☐ Contracted Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.
- ☐ The following Contracted Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406: \_\_\_\_\_

Contractor shall maintain on file the certificates showing that the Contracted Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any such contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of and protect from unauthorized disclosure any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District.
15. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Contractor and District and their respective successors and assigns.
16. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
17. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate court in Alameda County, California.
19. **Non-Discrimination.** PROVIDER shall not discriminate on the basis of a person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation in employment or operation of its programs.
20. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified mail to the last business address known to the person who sends the notice.
21. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this agreement and that failure to do so shall constitute material breach.
22. **Attorney Fees.** If any legal action is taken to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.
23. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incident damages, including but not limited to lost profits in connection with this Agreement.
24. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their

agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

25. **Subject To Approval of Board.** This Agreement confers no legal or equitable rights until it is approved by the District Board of Education at a lawfully conducted public meeting.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**DISTRICT:**

**ALBANY UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR:**

**FORENSIC ANALYTICAL CONSULTING  
SERVICES**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for District Notices:

Albany Unified School District  
819 Bancroft Way,  
Berkeley, CA 94710

Address for District Notices:

Forensic Analytical Consulting Services  
21228 Cabot Blvd.  
Hayward, CA 94545

Date of Board Approval: \_\_\_\_\_

**November 1, 2022**

TO Ms. Jackie Kim  
Chief Business Official  
Albany Unified School District  
819 Bancroft Way, Berkeley CA 94710

FROM Kris Maglunob  
Forensic Analytical Consulting Services  
21228 Cabot Blvd.  
Hayward, CA 94545

RE **Proposal for Asbestos and Lead Survey  
Cornell Elementary School  
920 Talbot Ave. Albany, CA 94706  
FACS Project No.: PJ73031**

[kmaglunob@forensicanalytical.com](mailto:kmaglunob@forensicanalytical.com)

Phone: 510-266-4611

Dear Ms. Kim

Forensic Analytical Consulting Services (FACS) respectfully submits this proposal to Albany Unified School District to perform an asbestos and lead-containing materials survey in relation to the subject-referenced project. Pursuant to your request, the survey will be performed at select offices, classrooms, mechanical rooms, and above ceiling spaces located within the interior of the building (Project Area) that will be impacted by the subject-referenced project.

## Client Objectives

Based on our previous email correspondence and site walk, the following summarizes our understanding of your objectives:

- To seek a trusted environmental expert, as a partner, to protect public health and reduce risk and liability.
- Renovation of the building located at the above referenced address.
- To comply with current asbestos and lead regulations and industry standards.

## Scope of Work

### **1. Review existing documentation, conduct a site inspection, and collect bulk material and paint samples during off hours.**

- a. FACS will review provided construction drawings and any available asbestos and/or lead inspection reports that may have included the Project Area.
- b. FACS will perform an on-site visual inspection to document suspect asbestos and lead-containing materials and paint and develop a sampling plan.
- c. FACS will collect bulk material and paint samples of suspect asbestos and lead-containing materials and paint that will be impacted by the planned renovation. The anticipated number of samples is identified in the table below.

### **2. Analysis and report generation.**

- a. Bulk samples will be analyzed by Polarized Light Microscopy (PLM) for asbestos content.
- b. Coating or material samples will be analyzed by Flame Atomic Absorption Spectrometry (Flame AAS) or Total Threshold Limit Concentration (TTLC) for lead content.
- c. All samples will be analyzed by an appropriately qualified laboratory on a 5-day turnaround time.

- d. FACS will provide a final written report. The report will include a summary of the survey findings, including the laboratory analytical results of the samples submitted for asbestos and lead analyses. One electronic copy of the report will be provided.

### **3. Quality Assurance/Quality Control.**

- a. FACS maintains a stringent QA/QC program to ensure the continued delivery of accurate and contextually appropriate technical data and solutions to our clientele and community. FACS practices are developed under the guidance of subject and industry sector practice groups consisting of FACS's leading subject matter experts. Technical oversight, including review of the scope of work and all work product, is provided on all projects by team members who have demonstrated proficiency in the pertinent subject matter per FACS's QA/QC program.

### **4. Additional items.**

- a. FACS will engage in communication, coordination and research activities as required to complete the above scope of work.
- b. Conditions may arise that significantly change the scope of work during the project. The cost of any changes to the scope of work will be priced individually and agreed to by FACS and Client before additional work is performed. The additional amount will be added to the original project cost.
- c. FACS will make repairs to areas where building components have been damaged during the collection of samples, and/or where destructive testing has been conducted. These repairs are done only to stabilize the impacted area and are not intended to return the impacted area to its pre-sample condition. FACS does not warranty these repairs. It is the client's responsibility to engage the appropriate professional(s) to return the building to its pre-testing condition or maintain any existing finishes or warranties.
- d. FACS reserves the right to invoice for any work done within that month for projects that will exceed 30 days in length.

## **Timeframe**

The testing will be performed at FACS' earliest availability following authorization to proceed. Samples will be submitted for analysis with the agreed turnaround time. An email summarizing our findings will be provided upon receipt of all laboratory reports. The written report of findings will be provided within approximately two weeks (10 working days) of receipt of laboratory reports. FACS will make every effort to comply with Client's scheduling and reporting needs.



## Cost

The Project, as defined by the Scope of Work, will be charged on a time and materials basis according to the attached Fee Schedule (Attachment A). **Total cost not-to-exceed \$7,590.**

<b>Asbestos and Lead Survey: 920 Talbot Avenue, Albany California 94706</b>	
Survey & Report (labor)	\$5,140
Survey Analytical (80 PLM samples and 18 lead samples, five-day turnaround time)	\$2,290
Reimbursable Expenses (mileage, shipping, etc.)	\$160
<b>Project Total (Not-to-exceed)</b>	<b>\$7,590</b>

## Limitations

The proposed scope of work is based on initial information provided to FACS by Client and on FACS' judgment and experience and the standard of practice for professional service. The findings will be subject to the limitations and variability inherent in the methodology employed. As with all environmental investigations, this investigation will be limited to the defined scope and will not purport to set forth all hazards, nor indicate that other hazards do not exist.

Please contact our office at (510) 266-4600 if you have any questions regarding the information provided. If you find this proposal acceptable, please issue a change order and return it to our office via email to [kmaglunob@forensicanalytical.com](mailto:kmaglunob@forensicanalytical.com). Thank you for your time and consideration.

Respectfully,  
Forensic Analytical Consulting Services, Inc. (FACS)



Kristoffer Maglunob  
Project Manager

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**ACCEPTANCE**

**Proposal for Asbestos and Lead Survey  
Cornell Elementary School  
920 Talbot Avenue, Albany, CA**

The terms and conditions set forth in the above proposal, Fee Schedule (Attachment A) and General Terms and Conditions (Attachment B) are hereby accepted.

\_\_\_\_\_  
Albany Unified School District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Purchase/

Work Order #: \_\_\_\_\_

## LABOR RATES

DESIGNATION	HOURLY RATE
Senior CIH	\$320
CIH/Principal Scientist	\$290
Professional Geologist	\$290
Senior Project Manager	\$225
Project Manager	\$180
Project Specialist	\$155
Senior Technician	\$145
Technician	\$130
Project Coordinator	\$130
Administrative Support	\$105

**Right People.**

**Right Perspective.**

**Right Now.**



## LABORATORY ANALYTICAL RATES (PER SAMPLE)

ANALYSIS	TURNAROUND TIME*					
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MICROBIOLOGY	Same Day	1 Day	2 Days	3 Days	4 Days	>7 Days
Non-Viable Air	\$180	\$145	\$130	\$80		
Non-Viable Bulk	\$130	\$120	\$80	\$60		
Total Coliform & E. Coli (MUG)		\$165	\$130	\$95		
Legionella Viable Culture						\$185

ASBESTOS	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
PCM (air)	\$27	\$24	\$22	\$20	\$18	\$16
PLM (bulk)	\$40	\$35	\$31	\$28	\$25	\$23
TEM (air)	\$280	\$200	\$175	\$150	\$125	\$100
Point Count – 400	\$125	\$100	\$90	\$80	\$75	\$70
Point Count – 1000/Gravimetry	\$250	\$200	\$180	\$160	\$150	\$140

OTHER	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
Lead – Atomic Absorption	\$65	\$55	\$45	\$35	\$30	\$25
Particle ID – Wildfire Smoke	\$410	\$310	\$235	\$185	\$160	\$130

\*Turnaround time = total business days to receive laboratory results after sample submission

## MISCELLANEOUS

Mileage: Cost plus 15%  
Reimbursables: Cost plus 15%  
Equipment and Consumables: Cost plus 15%  
Off-Hours Lab Opening Fee: \$400

Deposition/Testimony: Labor Rate x 1.5  
Emergency Response: Labor Rate x 2  
Overtime: Labor Rate x 1.5

### 2022 CA Fee Schedule

Please contact us for a complete list of services.

**Right People. Right Perspective. Right Now.**

## GENERAL TERMS AND CONDITIONS

**ALL ORDERS FOR SERVICES SET FORTH IN FORENSIC ANALYTICAL CONSULTING SERVICES, INC.'S SCOPE OF WORK (THE "SERVICES") SHALL BE COVERED BY THE FOLLOWING EXPRESS TERMS AND CONDITIONS WHICH SHALL CONSTITUTE THE ENTIRE CONTRACT (THE "CONTRACT") BETWEEN FORENSIC ANALYTICAL CONSULTING SERVICES, INC. ("FACS") AND THE CLIENT ("CLIENT").**

1. **TERMS AND CONDITIONS.** All terms and conditions relating to the rendering of services by FACS are set forth herein. The Proposal, including its Attachments, (the "Proposal") contains the final and complete agreement between the parties and there are no representations or warranties, expressed or implied, with respect to services, except as specifically set forth herein. No waiver by FACS of any default shall be deemed a waiver of any subsequent default. Failure of FACS to object to provisions contained in any order or other communication from the Client shall not be construed as a waiver of any right or remedy of FACS hereunder, nor an acceptance of any such provisions.
2. **INDEMNIFICATION.** The Client waives any claim against FACS and its directors, officers, employees, and agents, and agrees to defend, indemnify and hold FACS harmless from any claim or liability for injury or loss, including all attorney fees and defense costs, arising or allegedly arising from or in any way connected with FACS' services under this Contract, except where such claim or liability is caused by the gross negligence or willful misconduct of FACS. The Client also agrees to defend, indemnify and hold FACS and its directors, officers, employees, and agents harmless from any claim or liability, injury or loss, including all attorney fees and defense costs, arising in whole or in part from the negligent act or omission, and/or strict liability of the Client or anyone directly or indirectly employed or contracted by the Client. FACS does not guarantee the completion of performance of any contract between Client and other parties, nor is it responsible for those third parties' acts or omissions. FACS does not warranty or guaranty the safety of any place FACS provides its services.
3. **COMPENSATION.** The compensation for services will be billed in accordance with the rates stated in this Proposal. The rates are subject to change upon notification provided by FACS at its sole discretion. Time spent traveling, when in the interest of the Project, as defined herein, will be charged to the Client. Reimbursable expenses will be charged at cost plus 15%.
4. **PAYMENT TERMS.** Payment terms are Net 30 days unless FACS and Client have agreed in writing to different payment terms. FACS may, at any time, suspend performance of any service, withhold written reports, or require payment in cash, security or other adequate assurance satisfactory to FACS when, in FACS' sole opinion, the financial condition of Client or other grounds for insecurity warrant such action. FACS reserves the right to assess late charges on accounts past due at a rate of 18% per annum. Any attorney fees or other costs incurred in collecting any delinquent amount shall be paid by the Client.

For projects that will exceed 30 days in length, FACS reserves the right to invoice on a monthly basis.

5. **TAXES.** All sales taxes or use taxes, whether now existing or hereinafter imposed or modified, or taxes or duties of any nature whatsoever which may be assessed, shall be paid by the Client. In the event FACS is required to pay any such tax, the Client shall reimburse FACS upon demand. In lieu of such payment, the Client shall provide FACS with exemption certificates or other documents acceptable to taxing or customs authorities upon execution of this Proposal.
6. **CREDIT.** This Proposal is provided and accepted subject to FACS' approval of the Client's credit, determinable at any time and from time to time by FACS in its sole judgment, affecting the whole or any unfulfilled portion of this contract.
7. **LEGAL ENFORCEMENT OF GENERAL CONDITIONS.** If any portion of this Contract is found to be unenforceable, the remaining portions of the Contract shall remain in full force and effect.
8. **MODIFICATION OF AGREEMENT.** The foregoing conditions may be modified only by written agreement and signed by a duly authorized representative of FACS and the Client.